Introduction: A history of offender registries in Europe and the USA

The last decade can be characterised by the relevance improving of the topics of data privacy protection. Problems of data flow regulation during crime prevention activities have attracted substantially bigger attention due to the current legislative novelisations in the European Union in 2016-2018. Worth mentioning here is that the Polish criminal registry of sexual offenders seems to be the only public registry of offenders not only in the European Union but in whole European region as well. Simultaneously, despite its uniqueness, it is not well-known not only internationally but even in Poland. It seems justified to say that registry remains an inherently controversial topic in social consciousness and due to that fact, very few substantial researches have been conducted in this field. But before we will proceed to the main topic of the current paper, it seems highly beneficial to analyse the history of sexual offender registries in the world.

Undoubtedly, the longest history of publicly available registries of criminals can be found in the United States of America. So it's not surprising that the American experience inspired the Polish government to provide similar institutions into the Polish legislative system (we can find multiple comments on that of the former minister of Justice Z. Ziobro)[1]. In academic papers, it is also often mentioned that similar institutions exist in France and Germany[2], but we would need to emphasise here that those registries don't have public character.

Registries of sexual offenders in the United States of America began to appear in the early 1930s[3]. Initially, they were the prerogative of local legislations (cities and counties); later, they began to be available on the level of states (Florida, since 1937). Registration was conducted, as a rule, at a police station, convicts were photographed and fingerprinted. The personal data of criminals with the indication of the place of residence after release were entered into the registry. The local authorities hoped that the registration requirement would make the stay of convicts on the territory of the city or district undesirable which is supposed to positively influence the criminal situation in a state[4].

The first regional registry of sex offenders was established in 1947 in California, and after the next 20 years, in five states (Alabama, Arizona, Florida, Nevada, Ohio). They reflected the addresses of the place of residence of persons convicted of sexual crimes, but they were

not publicly disclosed and were used only by law enforcement agencies and courts[5].

Intensive development of the Institute of the Registry of Sex Offenders in the United States occurred in the 1990s[6]. After several cases of sexual crimes against children were actively discussed in the media and became the subject of high interest of the publicity. The social expectations of Americans were focused on the guarantees of the best protection of potential victims. In 1994, Washington state began community notification of its most dangerous sex offenders, making it the first state to ever make any sex offender information publicly available[7]. Prior to 1994, only a few states required convicted sex offenders to register their addresses with local law enforcement.

But those registries were either not publicly available or were provided in a restricted area of one municipality. The first publicly available federal registry appeared only in 2005 – the National Sex Offender Public Registry (NSOPR) which, due to the inaction of The Adam Walsh Child Protection and Safety Act,[8] was renamed in honor of 22-year-old college student Dru Sjodin of Grand Forks, North Dakota, a young woman who was kidnapped and murdered. The Registry introduces a system for classifying sex offenders into three groups based on the legal qualification of the committed crime:

- First of all, coercion to have sexual intercourse under threat of violence against a person who is in a helpless state; inducement to have sexual intercourse or commit other sexual acts with a person under the age of 12:
- Second-level criminal cases (tier II) include the production and distribution of child pornography; the involvement of minors in prostitution; sexual intercourse with a minor over 13 years old.
- Those guilty of other “minor sexual crimes”, who face up to a year in prison, belong to the category of first-degree sex offenders (tier I) (this is possession of child pornography or committing other sexual acts with a person over the age of 13 and under the age of majority).

If a person commits a similar act during the period of public recording, it automatically falls into a more serious category[9].

Criminological assessment of the sex offender registry system in the USA.

In the USA, the sex offender registry covers about 900 thousand convicts (0.28% of all citizens), and this figure has been consistently increasing in last several years[10].

Many researchers question the impact of the registry on reducing sexual crime in general and reducing the rate of recidivism of sex offenders in particular[11]. When comparing the level of responsibility among adults and minors in the commission of similar sexual crimes, it was found that there were no statistical differences between registered persons and those who evaded this duty.

It is often argued that similar state legislation is based on false notions, although popular in societal assumptions and presumptions regarding the nature of sexual criminality. Society has come to believe, firstly, that sex offenders are more prone to recidivism than other categories of offenders. Secondly, there is an opinion that the majority of sex offenders are strangers, unfamiliar to the victims. Thirdly, society attributes to perpetrators of sexual crimes a tendency to kill their victims, especially children.

Official statistics do not confirm these theses. The average rate of recidivism of all US criminals released from prison from 2014 to 2019 is 36%, of which only 13-14% commit a similar type of a crime. Also, statistics confirms that most of the sexual crimes are committed a first time and display no recidivism[12].

Most of the victims of sexual crimes knew the attacker earlier, and the courts found guilty mainly the victim’s friends or relatives. According to one study, only 9% of perpetrators of child sexual abuse and 28% of perpetrators of adult sexual exploitation were previously unfamiliar with the victims, especially when sexually motivated murders of adults and children occurred[13].

It is difficult to get a clearer picture, due to the inclusion in statistics of data not only of criminal cases against sexual integrity but also of crimes related to non-fulfillment of registration obligations. Some investigators claim that this is precisely the violation of the registration responsibilities of criminals the reason why the recidivism of American sex offenders is most often statistically reduced.

The study of the effectiveness of the registry institute should be distinguished from the

perception of this institution by society and practicing lawyers. Society is very supportive of the registry, considering it as an effective tool to combat sexual crime. About 4/5 of ordinary American citizens have a positive attitude towards the registry, and there is unanimity among politicians and judges[14].

A different, more critical attitude towards the registry could be found amongst those who maintain the registry, as well as amongst those who are engaged in the rehabilitation and treatment of sexual offenders[15]. Researchers who are engaged into the mandatory treatment of sex offenders, usually disapprove of the requirement to publish data on sexual offenders. In practice, 1/4 to 1/3 of adult Americans visited the resource at least once; hence, for the biggest part of society, it remains unused.

However, the usefulness of the registry for law enforcement agencies and society is substantially reduced by the incompleteness and irrelevance of the data contained in it. Most often, violations relate to the place of residence of sex offenders, that is, information that is most important from the point of view of the purposes of the registry.

The problem is based on the shortage of personnel servicing registries, underfunding, and plain mistakes, including those made by convicts themselves when they intentionally do not perform registration duties. Some of them proceed from the fact that failure to fulfill registration obligations is a minor violation compared to the consequences of prolonged use in a publicly accessible registry, which causes problems with finding a place of work or residence.

It is officially estimated that about 5-6% of the criminals included in the register have disappeared, 18.5% have been re-imprisoned, 8.9% live outside the registration state and even 0.2% of the persons died while their information is still available in the registry. An interesting fact is that the victims of sexual crimes support mandatory treatment of sex offenders, but disapprove the requirement to publish data on sex offenders[16].

it can be concluded that the registry creates a false sense of security, while at the same time it increases the feeling of fear in society. It is difficult to imagine the negative emotions of a person who has discovered that a sex offender lives in their neighborhood.

The Polish public registry of the sexual offenders: General overview.

Polish sex offenders registry and GDPR regulation

The efficiency of such a method of crime prevention remains highly controversial. Still, a new registry of sex offenders came into force in 2017 in Poland. Now after we've discussed the experience that was taken into consideration towards the legislative novelisation in the Republic of Poland it seems to be logical to proceed with the main topic of the article.

First of all, it is worth mentioning that the Polish Sex Offenders Registry consists of two modules, whereby the first is a register with limited access, and the second one is a public register.

The register with restricted access is a database that contains information about perpetrators of sexual crimes. The basis for placing data in the Register is the act of 13 May 2016 on countering threats of sexual crime. Following Article 12 of the act, everyone has the right to find out whether his / her data is in the register.

In turn, the public register is a publicly available database, which contains information about the most dangerous perpetrators of sexual crimes. These are, above all, data on people who have committed child (minors up to 13 years old) rapes and rapes committed with particular cruelty.

Unlike the American prototype, the Polish registry also provides the sentences information to the public access (amount of the years of imprisonment, committed crime, date of the sentence, and court which stated the sentence).

Firstly it supposed that the convicted perpetrators could request their data not be included in the public Registry up until the first of October of 2017 but after the statement of the High Court of the Republic of Poland that such regulation would be non-constitutional and would violate the fundamental principle of "*Lex retro non agit*", i.e., all information about the convictions before the inaction of the registry were erased in its final version[17].

The registry was supposed to be supplemented with a publicly available map of sexual crime

threats, which includes the places of sexual offenses and the places of residence of offenders, but this option wasn't included in the final version.

Access to the Public Register is unlimited. There is no fee for providing information from the Sex Offenders Register. Also, simultaneously with the launch of the Register, the regulation (EU) 2016/679 of the European Parliament on 27 of April 2016 on the protection of individuals and information privacy in the European Union (EU) and the European Economic Area (EEA). commonly known as the GDPR, entered into force.

This regulation has been valid throughout the European Union, including the Republic of Poland, since May 25, 2018, and has revolutionized the perception of issues related to the protection of personal data. Individuals have acquired a number of new rights, the meaning of which is largely to intensify their protection, more broadly understood as the so-called right to privacy. An important innovation is the introduction in Article 17 (1) of the GDPR of the so-called "right to be forgotten", also called the "right to delete data", which from the very first moments of the GDPR has aroused particular interest of individuals, and therefore it can be estimated that sooner or later it will also draw the attention of convicted persons.

This leads us to the question: *can the former offenders ask for the data erasure after it has been uploaded to the registry*? Or, in a more simple way: *does the internal Polish regulation violate the requirements of the GDPR*?

First, what should be mentioned here is that, according to the GDPR Art.2 "the Regulation does not apply to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security"[18].

This clause, in our opinion, excludes any possibility of using the GDPR requirements in the topic of crime prevention activities provided by any member State of the European Union. Which also allows us to conclude that such registries could be shortly implemented in other European countries as well. Hence, the answer for the second question should be a negative one.

This attitude is reflected by the Art. 86 of GDPR which states that personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation[19].

Despite this fact, many researches confirmed that there is some kind of a discrepancy between the GDPR regulation and the Act of 13 May 2016 on countering threats of sexual crime. The legislator first has considered the right to influence the content of the Register to the perpetrators and the courts. The principle is that the cancelation of the conviction, that is, in fact, "forgetting the act of the offender" occurs by law after the expiry of the periods provided in Article 107 of the Criminal Code of the Republic of Poland, and only on demand of the convicted person.

According to this provision, the court may decide the conviction to be cancelled after the expiry of 5 years at the earliest. The convicted person should also not commit any other crimes or other violations of law during this period while, at the same time, the sentence was not more than 3 years of imprisonment[20]. This provides us with a direct discrepancy with the GDPR requirements which openly guarantee the right to erasure of information from public access straight after the demand of the person to whom this data is connected.

Conclusions

The topic of the public registry's effectiveness wasn't properly analysed in Polish academic papers and in most of the published articles it received positive feedback[21]. Often, these papers speculate on other offender registries in European countries such as VISOR in the UK or FIJAIS in France, forgetting to mention that these registries are not publicly available[22]. On the other hand, The Helsinki Foundation for Human Rights claims that "a public registry is not an effective instrument against the risk of sex crimes." The HFHR is not against introducing into Polish law a mechanism that would register sex offenders but the publicly available source is openly criticized[23].

Also, current police statistics regarding sexual crimes didn't show significant changes in

the amount of the committed crimes (e.g., the amount of committed rapes in 2017 in the whole country was 1262; in 2019 was 1354 and in 2021 total amount of registered rapes was 1088). Simultaneously, the percentage of the solved rape crimes has been getting higher every year after the registry was enacted. According to official data percentage of rape crimes where the offender was found rose from 82.7% in 2017 to 85% in 2019 and 88% in 2021[24]. Hence, the registry could be hardly seen as a method of crime prevention, but rather as an additional instrument for police investigation. It should be also mentioned that topics of criminological effectiveness of the registry is often complicated, due to the high stigmatization of sexual crimes.

The provided official novelization should be criticized due to the lack of preciseness. Only after two years did the High Court of the Republic of Poland actually exclude the "*Lex post factum*" uncertainty as regards offenders of relevant sexual crimes (e.g., the proviso whereby even those violations which were committed before the Act of 13 May 2016 on countering threats of sexual crime should be automatically included Ito the registry).

I hope that this publication will raise awareness of the current lacunae in the European legislation and will help to avoid similar deficient registries' applications in other Member States of the Europen Union.

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